

## **FEDERAL LAW GUARANTEES EMPLOYMENT RIGHTS FOR RESERVISTS AND GUARDSMEN**

**Grafenwoehr Law Center**—Reservists and National Guardsmen now serving on active duty may have questions about returning to their civilian jobs. A Federal statute, the Uniformed Services Employment and Re-employment Rights Act (USERRA) of 1994, protects servicemembers' re-employment rights after they have completed military service.

### **Does USERRA Protect You?**

USERRA applies to voluntary as well as involuntary military service, in peacetime as well as war. Federal law therefore protects military personnel called up or activated for service at present. (Readers should be aware that USERRA does not apply to state call-ups of the National Guard for disaster relief, riots, and the like.)

You are eligible for re-employment rights under USERRA if you meet these five tests:

- (1) You must hold a civilian job.
- (2) You must have given notice to your civilian employer before you left the job for military service.
- (3) You must have been released from service under honorable conditions.
- (4) You must report back to the civilian job in a timely manner or submit a timely application for re-employment.
- (5) You must not have exceeded the five-year cumulative limit on total military service.

The "five-year cumulative limit on total military service" is an important feature of USERRA. All your active military service after December 12, 1994 counts towards this total, except for required drills, annual training, wartime service, and service during national emergencies. Few reservists or guardsmen have accumulated five years of active duty since December 1994, since drills and annual training do not count towards the total.

### **What Does USERRA Require of Soldiers?**

A soldier called to service for up to 30 consecutive days must report back to work on the first full workday after he returns home from deployment, plus an 8-hour period for rest. If reporting back within this deadline is "impossible or unreasonable" through no fault of the returning soldier, he must report to work as soon as possible after the 8-hour rest period ends.

A soldier called to service for 31 to 180 days must submit an application for re-employment with the employer within 14 days after he returns home from deployment. If

submitting the application within 14 days is impossible or unreasonable through no fault of the returning soldier, he must submit the application as soon as possible thereafter.

A soldier called to service for more than 180 days must submit an application for re-employment within 90 days after he returns home from deployment. These deadlines to report to work or apply for re-employment may be extended up to two years if a soldier was hospitalized for or recovering from an injury or illness that occurred during his military service.

### **What Are An Employer's Duties Under USERRA?**

Your employer must accommodate returning servicemembers as follows:

(1) Re-instate you promptly (generally a matter of days, not weeks, but will depend on how long you were deployed).

(2) Grant accrued seniority, just as if you had remained continuously employed at your civilian job. This applies to status, rate of pay, pension vesting, and credit for pension benefits.

(3) Provide training or retraining so that you can resume your duties at work.

(4) Protect you against discharge, except for cause. The period of this protection is 180 days following periods of service of 31 to 80 days. For periods of service of 181 days or more, the protection extends for one year.

A returning employee is not, however, always entitled to have his former job back. USERRA provides that, if the period of service was 90 days or less, the soldier is entitled to the job he or she would have attained if he had not gone to military service. For periods of service of more than 90 days, the employer may re-employ the returning employee as above, or in a position of "like seniority, status, and pay" to the duties which the person is qualified to perform.

### **Need Further Assistance?**

You can contact a National Committee for Support to the Guard and Reserve (NCESGR) ombudsman toll-free at 1-800-336-4590. Ombudsmen are trained to provide information and informal mediation services concerning civilian job rights of National Guard and Reserve members.

For legal assistance within the 100th Area Support Group, call Grafenwoehr Law Center, call DSN 475-7114/civilian (9641) 837 114; Hohenfels Law Center, DSN 466-2401/civilian (9472) 832 401; Vilseck Law Center, DSN 476-2289/civilian (9662) 832 289.